

FILED

MAR 21 2019

CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
YOUNGSTOWNIN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIODAVID C. MOWRY  
11188 Louisville Street  
Louisville, Ohio 44641BEVERLY R. MOWRY  
11188 Louisville Street  
Louisville, Ohio 44641

Plaintiffs

-vs-

UNITED STATES OF AMERICA  
c/o Attorney General of the United States  
William Barr  
US Department of Justice  
950 Pennsylvania Avenue  
Washington, DC 20530-0001UNITED STATES OF AMERICA  
c/o Justin E. Herdman  
US Attorney for the Northern District of  
Ohio  
Office of the United States Attorney  
United States Courthouse  
801 West Superior Avenue  
Suite 400  
Cleveland, Ohio 44113-1852

Defendants

CASE NO.

JUDGE

5:19CV 0627  
JUDGE ADAMS  
MAG. JUDGE BURKECIVIL ACTION  
NEGLIGENCEORIGINAL COMPLAINT FOR  
DAMAGES UNDER FEDERAL TORT  
CLAIMS ACT

David C. Mowry and Beverly R. Mowry, plaintiffs, by and through their attorneys, Marshall D. Buck and Robert J. Tscholl, now come before this Court and complain of the United States Government, as follows:

## I. JURISDICTION, VENUE, AND CONDITIONS PRECEDENT

1. Plaintiffs are husband and wife. They live at 11188 Louisville Street, Louisville, Ohio 44641 and therefore are residents of the Northern District of Ohio.

2. The claims herein are brought against the United States pursuant to the Federal Tort Claims Act (28 U.S.C. §2671, et seq.) and 28 U.S.C. §1346(b)(1), for money damages as

compensation for loss of property and personal injuries that were caused by the negligent and wrongful acts and omissions of an employee of the United States Government while acting within the scope of his office and employment, under circumstances where the United States, if a private person, would be liable to the plaintiffs in accordance with the laws of the State of Ohio.

3. Venue is proper in that all of the acts and omissions forming the basis of these claims occurred in the Northern District of Ohio and arose from the negligent operation of a motor vehicle by an employee of the United States Postal Service, said negligence causing injury and damages to the plaintiffs.

4. Plaintiffs have fully complied with the provisions of 28 U.S.C. §2675 of the Federal Tort Claims Act.

5. This suit has been timely filed, in that plaintiffs timely served notice of their claims on the United States Postal Service on August 1, 2018, and upon information and belief, said notice of claim was received by the United States Postal Service on or before August 10, 2018. Representatives of the law department of the National Tort Center for the United States Postal Service have been communicating with plaintiffs' counsel regarding the claims, and despite ongoing communications, no decision has been rendered by the government and more than six months have passed since the date the claim was received in August 2018.

## II. EVENTS FORMING THE BASIS OF THE CLAIMS

6. David Mowry was operating a motor vehicle in an easterly direction on State Route 619 at the intersection of Atwater Avenue in Lexington Township, Stark County, Ohio on July 16, 2017. State Route 619 is a through street with the right of way.

7. Jeffrey Allen Thomas, an employee of the United States Postal Service, was operating a United States Postal Service delivery truck in a southerly direction on Atwater Avenue and stopped at a stop sign at the intersection of State Route 619.

8. David Mowry signaled his intention to make a left turn to proceed in a northerly direction on Atwater Avenue, and while his vehicle was within the intersection of State Route 619 and Atwater Avenue in the process of making a left turn, the USPS employee, Jeffrey Allen Thomas, carelessly and negligently drove from the stop sign into the intersection striking David Mowry, knocking him to the ground, then continued driving the front wheel of his vehicle over Mr. Mowry's left lower leg causing an open segmental and comminuted fracture of the tibia and fibula.

9. The conduct of the USPS employee was negligent and in violation of Ohio Revised Code §4511.43 in failing to yield the right-of-way to a motorist lawfully within the intersection.

10. As a direct and proximate result of the negligence of the USPS employee in the operation of the motor vehicle, David Mowry sustained injuries that are permeant, resulting in a substantial physical deformity of his left leg.

11. As a direct and proximate result of the negligence of the USPS employee, Mr. Mowry was required to seek medical and hospital care including multiple surgeries for repair of the fractures, debridement of infectious tissue, the placement of metal plates and pins to stabilize his leg, the removal of metal plates and pins due to infection, the removal of his bone tissue due to infection, undergoing aggressive antibiotic therapy which resulted in damage to his kidneys, thereby causing kidney failure, and multiple surgeries in wound care including skin flap revisions to cover the affected areas of his leg.

12. David C. Mowry has incurred hospital and medical expense as a direct and proximate cause of the negligence of the USPS employee and he has incurred other out-of-pocket expense for transportation to and from medical appointment he has been required to attend.

13. Beverly R. Mowry, as the wife of David C. Mowry, is entitled to pursue claims under the laws of the State of Ohio on her own behalf, including but not necessarily limited to claims for loss of consortium, which are derivative of the claims of David C. Mowry.

14. As a direct and proximate cause of the negligence of the USPS employee, Beverly R. Mowry has lost the care, comfort, companionship and loss of marital relations of her husband, David C. Mowry.

15. David C. Mowry was the titled owner of a 2014 Triumph Motorcycle, which he was operating at the time of the accident.

16. As a direct and proximate result of the negligence of the USPS employee, said motorcycle was damaged and depreciated in value below its reasonable fair market value and was determined to be a total loss.

17. David C. Mowry has been damaged by the loss of the value of the motorcycle and has thereby sustained damage directly caused by the negligence of the USPS employee.

18. David C. Mowry and Beverly R. Mowry would be entitled to pursue these claims under the laws of the State of Ohio including, but not necessarily limited to claims for personal injury, medical bills, damage to personal property, and loss of consortium.

### III. VIOLATION OF ORC 4511.43

19. Plaintiffs incorporate by reference herein all allegations set forth above.

20. The acts and events set forth above constitute negligence on the part of the USPS employee, acting in the course and scope of his employment, and therefore the United States Government is liable for all damages caused by such acts as provided by 28 USC 2674.

#### IV. DAMAGES

21. Plaintiffs have suffered the following injuries for which they seek full compensation under the law:

- (a) Injuries to the person of David C. Mowry including fractured bones, torn ligaments, torn tendons, damage to muscle and fibrous tissue, infection, kidney failure, permanent pain and discomfort, and a permanent substantial physical deformity of his left leg.
- (b) emotional distress, humiliation, and loss of enjoyment of life.
- (c) medical bills and expenses for supplies and transportation in obtaining medical care and treatment.
- (d) loss of the care, comfort, companionship, guidance and marital relations caused by the negligence of the defendant.


#### V. PRAYER FOR RELIEF

WHEREFORE, the plaintiffs are entitled to damages from the United States, and they do hereby pray that judgment be entered in their favor and against the United States Government as follows:

- 1. Damage to the personal property of David C. Mowry in the amount of \$8,000; plus
- 2. Personal injuries sustained by David C. Mowry including pain, suffering, permanent and substantial physical deformity, emotional distress, humiliation, loss of enjoyment of life, hospital and medical expenses, in the amount of \$5,350,099.30;
- 3. Loss of consortium suffered by Beverly R. Mowry in the amount of \$500,000.00;
- 4. All in the total amount of \$5,858,099.30.

Plaintiffs are further entitled and do hereby seek recovery of all costs and attorney fees incurred by the plaintiffs in this civil action, together with and for such further and additional relief at law or in equity that this court may deem appropriate or proper.

Respectfully submitted,

/s/ Marshall D. Buck 

MARSHALL D. BUCK (0009115)

COMTOCK, SPRINGER & WILSON CO., LPA

100 Federal Plaza E., Ste. 926

Youngstown, Ohio 44503

(330) 746-5643

(330) 746-4925 (fax)

mdb@csandw.com

ATTORNEYS FOR PLAINTIFF

**INSTRUCTIONS TO THE CLERK**

Plaintiff has issued a waiver of service of summons to each of the defendants named herein and will file the executed reply upon receipt.

/s/ Marshall D. Buck 

MARSHALL D. BUCK (0009115)

COMTOCK, SPRINGER & WILSON CO., LPA

ATTORNEYS FOR PLAINTIFF